

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN FRED THOMAS**, on April 22, 2003 at 1:50 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Bob Keenan, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Jon Ellingson (D)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Dan McGee (R)
Sen. Walter McNutt (R)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Fredella D. Haab

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB363, 4/22/2003

CHAIRMAN FRED THOMAS, SD 31, STEVENSVILLE stated it had come to our attention that one or more of these bills may have had a transmittal deadline issue. Particularly HB 363 by **REP. BROWN, HD 14, BILLINGS**, and it was my understanding that when that bill went through the process it was a revenue bill. It was raised revenue for the general fund but in the status it was an

appropriation bill. He had the status and all that business about this bill of **REP. BROWN'S**. It went out of the Senate on April 15 and the 14th was the appropriation deadline and the 16th was the revenue deadline. It was on time for the revenue deadline for those amendments to the House. He needed a motion to recognize that bill as a revenue bill versus an appropriation bill.

Motion: **SEN. MCNUTT** moved **RECOGNIZING HB 363 OF REP. BROWN AS A REVENUE BILL**.

Discussion:

SEN. JIM ELLIOTT, SD 36, TROUT CREEK, asked what committee was this bill in the Senate?

CHAIRMAN THOMAS said he thought it was in the Finance and Claims Committee. It then went to Business and Labor and then back to Finance and Claims.

SEN. ELLIOTT asked whether it raised additional revenue that the state does not already control.

Chairman Thomas said it was his opinion that it raises revenue for the general fund, the purpose of which it was not designed for.

SENATOR ELLINGSON, SD 33, MISSOULA, asked **Mr. Greg Petesch, Legislative Services**, was the power of the Rules Committee simply to re characterize a bill which had been previously labeled one thing and then called another so that it can meet the desired transmittal deadline?

Mr. Petesch said that since it was a House bill, he believed that purview lied with the House of Representative and the designation by this committee would not be controlling in the House of Representatives.

SEN. ELLINGSON asked if this an issue that needed to be addressed by the House Rules?

CHAIRMAN THOMAS said when he talked to the Speaker this morning about this, he asked that we take it up and that was why they were meeting on it today. He guessed if they were to concur that it was a revenue bill from this committee, then we could pass this on and they wouldn't need to act.

SEN. ELLINGSON asked if his suggestion was they act today in a form of making a recommendation recognizing that our designation

of it was nothing other than a recommendation and suggest to them that they take whatever action was appropriate?

CHAIRMAN THOMAS said we could give them our opinion. If they think they need to act thereafter, they can move it.

SEN. ELLINGSON asked **Mr. Petesch** if the House couldn't re-characterize this bill from an appropriation bill to a revenue

Mr. Petesch said it was his understanding that because it was after transmittal, it was up to the House as to whether in its current form they choose to suspend their rules to allow the late transmittal of an appropriation bill. If the bill was re-characterized as a revenue bill, it met transmittal and the House will not have to suspend their rules.

SEN. ELLINGSON asked if he was saying that the House Rules does have the ability to re characterize a bill from an appropriation bill to a revenue bill if they choose to do so?

Mr. Petesch said the bill was characterized as an appropriation bill now because it went to an Appropriation Committee in the House and to the Finance and Claims Committee in the Senate and under your transmittal agreement referred to those committees are treated as if they were appropriation bills for transmittal deadline purposes.

SEN. ELLINGSON said he was still not certain he understood if he got an answer to what he was looking for. Since it had been characterized as an appropriation bill by the House, does the House have the power to re-characterize it as a revenue bill?

Mr. Petesch said he believed they had as much power to do that as this committee had.

SEN. ELLINGSON asked how much power does this committee have?

Mr. Petesch said the Rules Committee interprets the rules of the legislature and those interpretations are binding unless the body challenges the opinion of the committee.

SEN. ELLIOTT asked if the definition of a revenue bill in the rules was it lowers or raises revenue?

Mr. Petesch said it "increases or decreases" revenue was the language of the rule.

SEN. ELLIOTT ask **Mr. Petesch**, in his opinion, does a bill that transfers money from one state agency to another raise revenue?

Mr. Petesch answered no.

SEN. DAN MCGEE, SD 11, LAUREL, wanted to follow up on **SEN. ELLIOTT'S** question. The revenue that came to the work comp fund, was that considered a state agency?

Mr. Petesch answered yes.

SEN. MCGEE asked if monies that go to the State Fund paid by employers etc. that are no longer going to be used for the "State Fund" but now transferred to the general fund so they can be used for a variety of different sources, would that not be a revenue?

Mr. Petesch said that was an existing source of revenue. It was not an increase or a decrease in revenue.

SEN. MCGEE said it was an existing source of revenue for the total of state government but not for the use by the legislature. Was that not correct?

Mr. Petesch said everything was available for use by the legislature if they change the law to allow it.

SEN. MCGEE said his opinion was that as he looked at the language where it said "x million dollars" were going to be transferred to the general fund and we did not have those monies coming into the general fund and those monies were in fact obliged some place else except that we can take statutory action and change that. To me that makes this a revenue bill in my mind. It certainly was not an appropriation bill in his mind. He supposed somebody could argue that it was being appropriated from the "State Fund" to the general fund but that didn't seem logical to him. He saw this clearly as a revenue bill.

SEN. VICKI COCCHIARELLA, SD 32, MISSOULA, wanted to make a clarification for the record. This bill talks about the "Old Fund" not the "State Fund." That was a very distinct difference because it was not "State Fund" money they are talking about. This was "Old Fund" money that was paid with the old fund liability tax. Just so there wasn't any confusion about taking current State Fund premium dollars, because that was not what this bill was.

SEN. MCGEE appreciated her correcting him on that. He was thinking "Old Fund" but saying "State Fund."

SEN. ELLIOTT said it seemed to him that this bill failed both tests of being a revenue bill. It did not raise revenue and it

was not sent to a revenue committee. In his opinion, he could not support the motion.

SEN. ELLINGSON said neither could he support the motion. He thought if this bill was going to be handled appropriately, it needed to go back to the House for the House to suspend its rules and re-characterize it as a revenue bill. Any action that they take here today was premature of any action that must be taken by the House of Representatives for it to be properly processed.

Ms. Rosana Skelton, Secretary to the Senate, said to clarify the record, all of these bills on this list are in the House now.

SENATOR BILL GLASER, SD 8, HUNTLEY, asked **Mr. Petesch** if they had a legal obligation to pay it back if we take this money?

Mr. Petesch said only if the amount of claims are in excess of the available money in the "Old Fund."

SEN. GLASER asked when would they know that? Three, four, or five years from now?

Mr. Petesch said it depended when those claims came due, **SEN. GLASER**.

SEN. GLASER asked if it made any difference if this money actually came from the "New Fund" to the "Old Fund."

Mr. Petesch said this money has always been in the "Old Fund."

SEN. GLASER wasn't sure that was true because this was the way the money moved through the process.

Mr. Petesch said this money was in reserve for the "Old Fund." A great deal of that money came from taxes on employer payroll and employee taxes. The reason you have a legal obligation if there were insufficient money to pay those claims, was that those claims were contractually obligated by an agency of the state to be paid to those injured workers. That was why if there was insufficient money in the "Old Fund" as they become due, the state will have to raise revenue because you can't have impaired the contract between injured worker and the state agency that issued the contract.

CHAIRMAN THOMAS said there your go. You have to raise revenue to replace it. So it was obviously a revenue bill because it takes revenue to replace the revenue we were taking.

SEN. ELLIOTT said he had one last comment in the fact of what he believed was an obvious conclusion. He did not see a need or the necessity or a benefit in the Senate compromising the integrity of their rules to transfer a bill to the other house, when the other house was entirely capable under its rules of accepting or rejecting this bill.

SEN. STORY asked what did they do with it when it got back to the House? Did they just put it in the drawer or did they read it across?

CHAIRMAN THOMAS said it was returned to the House on the 15th and a revised fiscal note was printed on the 16th and they had it in their possession since.

Ms. Skelton said when they received the message from the Senate that the bills were returned, they read that. That constituted and acceptance.

SEN. GLASER said he presumed it was without objection. He didn't remember hearing that somebody objected in a House committee.

Ms. Skelton said she didn't know that. Just for an example, we received a bill back from them after the deadline, SB 464 was returned with House amendments after the deadline. We accepted it and acted on the House amendments.

SEN. STORY asked how did it come about that they said they were not going to take it if it was read across the rostrum? Somewhere after the fact someone came back and said, they didn't think they should take this bill. He thought they had already taken it and they can't back out of it now.

SEN. COCCHIARELLA said she agreed that it seemed they were here and the House probably doesn't want to get into another Rules fight that they had day after day. They put us on the spot and it didn't seem like there was any action that needed to be taken and we should just adjourn. What we vote on here had really no force behind it. They can still choose to do what they choose to do and if there was a feeling that they were compromising their rules by making this motion and voting on it, why are we even here? The problem was a House problem and not ours.

CHAIRMAN THOMAS said it was his opinion that if this committee does pass this motion, that it had full effect on the bill. The House could disagree with that and then you have a situation where there was conflict. That was his opinion. It was his opinion that our rule was not very specific. It said a revenue bill was one that increased or decreased revenue. Well, we have

opinions on that and it was my opinion that this bill raised revenue for the general fund. He thought that if this committee were to act on this motion then it changed the status of that bill no matter where the bill was at in the process. The House had a disagreement with that, then the Rules Committee or the majority of the House would throw that question and it needed to be resolved.

SEN. STONINGTON asked what brought this to his attention?

CHAIRMAN THOMAS said it was a discussion with **SPEAKER DOUG MOOD, HD 58, SEELEY LAKE.**

SEN. STONINGTON said she became aware of these bills that had been passed back to the House and that they were read across the rostrum. Then, did somebody say they missed their deadline?

Ms. Skelton said the list was given to her by the computer people downstairs. She didn't know what caused this list to generate but they did accept the bills on the 15th without any questions, just like we accepted one late. We knew it was late and we wanted it back so we didn't question it. We accepted it. Once it was in our possession she didn't know how, just like **SEN. MCNUTT'S** bill passed and they asked for it back and they had already returned it to us, it was in our possession and we choose not to honor their request. You don't have to give it back. If they don't accept it, that was one thing. If they accepted it, she thought they had it.

SEN. STONINGTON asked if every one of these bills on this list had been accepted by the House?

Ms. Skelton said she hadn't looked each one of these up but that was what the auricle man said these were in the House but they missed the deadline. She assumed they all had been returned and now they were looking at the returned dates.

SEN. STORY said it wasn't in our possession any longer.

SEN. STONINGTON said she didn't see it was our issue.

SEN. ELLIOTT asked **Mr. Petesch** once a bill was read across the rostrum, that had been transmitted from one house to the other house, in what house was in possession of this bill?

Mr. Petesch said the bill was in possession of the body that actually had physical possession of the bill and currently the House had physical possession of this bill.

SEN. ELLIOTT asked further if the House had possession of this bill, how can we make a ruling on it?

Mr. Petesch said he thought that was the issue he raised originally.

SEN. ELLIOTT said he thought the bill was improperly before this committee.

CHAIRMAN THOMAS said he didn't agree with that but he really didn't care at this point. As long as the House can get this bill passed. He was willing to bring this back up at a later date if that was what we should do. He didn't have any problem doing that. He thought that the status of a bill that we don't need to have possession of a bill to determine what it was. That was his opinion. This committee can decide if it was this or that on the bill and it was our purview to get it out of here and it was our intent that this bill had met the deadline of the revenue by one day in going across. The things needed to be changed in the computer to a revenue bill. He guessed it would be his assessment that we can concur with the House leadership and see what they wanted to do and if they want to go just to their leadership of the rules committee and take this up, we can ask them to consider that, if not we can take it back up here at a different time. Was that alright with the members here?

SEN. STORY suggested that since the House had possession of this bill, he didn't think they could get rid of it without actually taking a positive vote to reconsider their action to accept it. They can't send it back and if we don't take it back, it was their bill.

CHAIRMAN THOMAS said if the bill needed a transmittal deadline, it did that. When a bill passed its deadline, and we don't catch that and it carried forward, where was the bill.

Ms. Skelton said it was self healing if you accept it after the deadline and act on it. It didn't matter who brought it up now, we accepted this bill back late with the House amendments, we acted on it, it was on the floor in front of everybody and nobody objected. Therefore, it was healed. It didn't matter whether it was late or not, we had accepted it and we had acted on it. That issue was over, in her mind.

Mr. Petesch said acting on a bill was what cured the late transmittal.

SEN. ELLINGSON asked that at this point **Mr. Petesch**, was it your opinion that they had not acted on the bill? **Mr. Petesch** said

yes. But, **Mr. Petesch**, it was your opinion that if they acted on it that would cure any defect in the transmittal problem that they had been talking about. **Mr. Petesch** agreed. To take it a couple of steps further, assume the bill doesn't make the deadline, nobody caught it, it passed out of the House and was signed by the Governor, there was no legal basis for challenging the validity of the statute in a subsequent lawsuit simply because it failed to meet the transmittal deadline according to the rule? **Mr. Petesch** said that was correct.

SEN. STONINGTON had a question about that. Just thinking about the process and protection of the minority, let's take an example of the bill that came across from the House. It was acted on by the Senate, but my speculation was that the minority was never informed about that having missed a transmittal deadline. Therefore, they were not given to opportunity to object if they had ever wanted to. What you were saying, as she understood it was, that it was up to the minority to be paying enough attention to catch something like that.

Ms. Skelton said she didn't think so, it was up to us to catch that. It was one we didn't even catch.

SEN. STONINGTON asked if she felt it was her responsibility to notify the body as a whole when there was a transmittal deadline issue such as this?

Ms. Skelton said it was probably part of her duties.

SEN. STONINGTON had one more question about HB 727 which as **Mr. Petesch** said implemented HB 2 and should not be on this list.

CHAIRMAN THOMAS said any bill that implemented HB 2 should not be on the list. There was no transmittal deadline correct, **Mr. Petesch**, that implemented HB 2?

Mr. Petesch said he believed the issue with that bill was that there was no category on the status system that allowed you to designate something other than an appropriation, general, or revenue bill. That bill was requested to implement HB 2 so it should have no transmittal date.

Ms. Skelton said it would be the same for HB 43.

Mr. Petesch said no, that was a revenue bill. It was a revenue bill because it had a fee in it.

CHAIRMAN THOMAS said he would like us to act on **SEN. MCNUTT'S** motion so that would preclude us from meeting again. The motion

was HB 363 be reflected as a revenue bill. Any further discussion.

Vote: Motion SEN. MCNUTT'S MOTION ON HB 363 carried with COCCHIARELLA, ELLINGSON, ELLIOTT, STONINGTON, and TESTER voting no.

CHAIRMAN THOMAS said they didn't have to deal with any of these bills on this list.

SEN. ELLIOTT asked about HB 11. Clearly he would think it was an appropriation bill, and it was listed that way.

CHAIRMAN THOMAS said second reading was on the 14th and the 15th was the deadline. The 14th was the deadline and that was when they had second reading. They will have to deal with that in the House. He said it was an appropriation bill and he didn't want to go through this list of bills at this point and that was not why he called a hearing today.

SEN. ELLIOTT said that was an appropriation bill and they missed the deadline and they will have to deal with that.

CHAIRMAN THOMAS said that was an issue the House had to deal with because it truly missed a transmittal deadline, they'll need to suspend their rules to accept it.

SEN. ELLIOTT said he understood, but the exact same action could have been taken on HB 363.

CHAIRMAN THOMAS said the issue before us, was it a revenue or an appropriation bill?

SEN. ELLIOTT said that was correct. He supposed he saw a discrepancy in the way various pieces of legislation are being treated and perhaps one bill was more politically benign than the other, but he thought it was a matter of general principle that same types of legislation should be treated alike.

Motion/Vote: SEN. STORY moved TO ADJOURN. Motion carried unanimously.

ADJOURNMENT

Adjournment: 2:35 P.M.

SEN. FRED THOMAS, Chairman

Fredella D. Haab, Secretary

FT/FH

EXHIBIT (rus85aad)